

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

FAHIM JAMAL RASHAD

PLAINTIFF

v.

No. 1:13-cv-32-DPM

**DICK H. SALLINGS, Executive
Director, Arkansas Public Defenders
Commission; TAMMY L. HARRIS,
Managing Public Defender, Cleburne
County; THOMAS KENDRICK, Public
Defender, Cleburne County; JEFF SIMS,
CID, Independence County**

DEFENDANTS

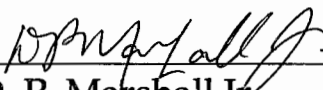
ORDER

Rashad is an inmate proceeding *pro se* and *in forma pauperis* in this § 1983 action. This court must screen Rashad's complaint. 28 U.S.C. § 1915A. Rashad claims he was not properly represented by the public defender's office in his state criminal proceedings and that defendant Sims fabricated evidence against him. Public defenders do "not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). So Rashad's § 1983 claim against them cannot succeed. Defendants Sallings, Harris, and Dendrick are dismissed.

Service is appropriate as to Defendant Sims. The Clerk shall prepare summons for Sims and the United States Marshal shall serve it and a copy of

the complaint, No 2, without prepayment of fees and costs or security. Rashad's motion to compel, No 7, is denied without prejudice. Only Sims will be served; and he need not respond to discovery requests until he has been served and made a party to this lawsuit. FED. R. CIV. P. 26(d)(1).

So Ordered.



D. P. Marshall Jr.
United States District Judge

